

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

Nancy Pinke

Plaintiff,

v.

Civil No. _____

Papillon Club of America, Inc.

Defendant

**COMPLAINT FOR
COPYRIGHT INFRINGEMENT**

Now comes Plaintiff Nancy Pinke (“Plaintiff”) for her Complaint against Papillon Club of America, Inc. (“PCA”):

PARTIES, JURISDICTION AND VENUE

1. Nancy Pinke is a citizen of the State of Minnesota and her residence is located in Elko, Minnesota.
2. Upon information and belief, PCA is a Delaware non-profit corporation organized under the laws of Delaware with its president, Kevin Ray, having a principal residence at 6152 Brooksville - Salem Road, Clayton, Ohio.
3. This Court has subject matter jurisdiction over this action under 28 U.S.C. §§ 1331 and 1338 as it arises under Title 17 of the United States Code.

4. This Court has personal jurisdiction over PCA because a substantial part of the events giving rise to the claims asserted in this Complaint occurred in this judicial district, and PCA is found and is doing business in this judicial district. More specifically, PCA solicits memberships from residents of Minnesota and has members residing in the State of Minnesota. Furthermore, as alleged in greater detail below, PCA has intentionally infringed the copyrights of Plaintiff, a resident of Minnesota, knowing that the injury of such copyrights would be felt in Minnesota.

5. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391 and/or 1400.

PLAINTIFF CREATES “A STUDY OF THE BUTTERFLY DOG”

6. In 1991, Plaintiff created a unique work titled “Standard of the Papillon” that included her original drawings of papillon dogs for illustrating the ideal American Kennel Club standard for such dogs. A copy is attached as Exhibit 1.

7. In 2007, Plaintiff created a derivative work of the “Standard of the Papillon” titled “A Study of the Butterfly Dog, Papillon and Phalene.” (Hereinafter, “A Study of the Butterfly Dog, Papillon and Phalene” shall be referred to as “The Butterfly Dog.”). “The Butterfly Dog” is a study of the “Standard of the Papillon.” Plaintiff created the illustrations that appear in the book. Exhibit 2 to this Complaint is a true and correct copy of the illustrations created by Plaintiff that appear in “The Butterfly Dog.” The illustrations of “The Butterfly Dog” are subject to U.S. Copyright Registration VA 1-671-591 granted by the U.S. Copyright Office on April 1, 2009. A copy of this registration is attached to this Complaint as Exhibit 3. This registration is owned by Plaintiff and has not been assigned, sold or licensed.

8. "The Butterfly Dog" was widely distributed to members of PCA in 2007 and beyond, as well as non-members. Plaintiff distributes copies of "The Butterfly Dog" on her website.

PCA INFRINGES PLAINTIFF'S COPYRIGHTS

9. In about 2007, PCA had drawings of a papillon prepared by Fred Carlson for publication in the "Illustrated Standard of the Papillon" (referred to hereinafter as "the Carlson drawings"). Plaintiff informed PCA that she considered the Carlson drawings published in the "Illustrated Standard of the Papillon" to have plagiarized her work and infringed her federally registered copyrights. PCA had an attorney evaluate whether the Carlson drawings infringed Plaintiff's copyrights. When Michelle L.H. Ing, the attorney hired by PCA, reviewed the Carlson drawings, Attorney Ing concluded that the drawings were an infringement of Plaintiff's copyrights. PCA then recalled the "Illustrated Standard of the Papillon," but apparently certain members of PCA refused to return their copies.

10. Recently, PCA published a new "Papillon Illustrated Standard," which was released on the PCA website and which reused the Carlson drawings. These drawings are substantially similar to Plaintiff's copyrighted drawings and used without Plaintiff's permission. PCA has subsequently taken down the new "Papillon Illustrated Standard."

COUNT I: COPYRIGHT INFRINGEMENT

11. The allegations from the preceding paragraphs of this Complaint are incorporated by reference as if fully set forth herein.

12. Plaintiff's drawings and derivatives thereof are covered by her copyright registrations, are each original and constitute copyrightable subject matter.

13. Plaintiff has complied in all respects with the provisions of the Copyright Laws of the United States, 17 U.S.C. § 101 et seq. and has secured her rights and privileges in the original "The Butterfly Dog" and derivatives thereof and has obtained Certificates of Registration from the Registrar of Copyrights, the United States Copyright Office. The registrations for the original "The Butterfly Dog" work shown in Exhibit 1 were effective prior to the commencement of infringement by Plaintiff.

14. The exclusive rights granted to the copyright owner under 17 U.S.C. § 106 include (a) the right to reproduce the copyrighted works and copies; (b) the right to prepare derivative works on the copyrighted work; and (c) the right to distribute copies of the copyrighted work to the public.

15. Pursuant to 17 U.S.C. § 105, an infringer is one who violates the exclusive rights of the copyright owner as provided in 17 U.S.C. § 106.

16. PCA has had access to Plaintiff's copyrighted works, is copying Plaintiff's copyrighted works and has distributed copies of Plaintiff's copyrighted works within the United States, all exceeding and without the authorization of Plaintiff and in violation of her rights under the Copyright Laws of the United States.

17. The acts of PCA have been willful, deliberate and, despite Plaintiff's notice of copyright, all to the profit of Defendant and to the damage and injury of Plaintiff. Such damage and injury is irreparable and will continue unless the Court enjoins such

infringement. The wrongful acts of the Defendant have caused the Plaintiff substantial monetary damage in an amount yet to be determined.

DEMAND FOR JUDGMENT

WHEREFORE, Plaintiff prays for entry of judgment in favor of Plaintiff and against Defendant providing:

1. That the Papillon Club of America, Inc. its officers, employees, agents, independent contractors and all other persons acting in active concert or participation with them, be preliminarily and then permanently enjoined from:
 - (a) advertising, promoting, commercializing, selling, offering for sale, distributing or otherwise copying copies of the “The Butterfly Dog” or the drawings therefrom;
 - (b) otherwise infringing the “The Butterfly Dog” copyrights; and
 - (c) benefitting from the misuse, misappropriation, pirating and theft of the “The Butterfly Dog” drawings.
2. That all infringing articles be delivered to Plaintiff for destruction.
3. That Defendant pays Plaintiff the greater of Plaintiff’s actual damages, Defendant’s profits or statutory damages as provided in 17 U.S.C. § 504(c).
4. That any monetary award be increased in accordance with 17 U.S.C. § 504(c)(2) as willful acts.
5. That the Plaintiff be awarded her costs and attorneys’ fees incurred herein pursuant to 17 U.S.C. § 505.
6. Awarding Plaintiff such other relief as this Court deems necessary and just.

JURY DEMAND

Pursuant to Fed. R. Civ. P. 38(b), Plaintiff hereby demands a trial by jury on all issues so triable.

Date: December 3, 2014

/Peter G. Nikolai/

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